

No. 2465

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian Ad Litem,

Plaintiff in Error,

vs.

THE ARIZONA COPPER COMPANY,  
LIMITED, a Corporation,

Defendant in Error,

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the District of Arizona.

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Filed

SEP 22 1914

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the  
District of Arizona.*

In the Matter of the Petition of RICHARD  
SILVAS, an Infant, for the Appointment of  
a Guardian *ad Litem*.

**Petition for Appointment of Guardian Ad Litem.**

To the Honorable WILLIAM H. SAWTELLE,  
Judge of said District Court.

Your petitioner respectfully represents:

1.

That the above-named Richard Silvas is a minor over fourteen years and under twenty-one years, and that he resides with your petitioner at Clifton, Greenlee County, State of Arizona, and that your petitioner is the father of said infant, and makes this application on his behalf, and avers that said minor has a cause of action against The Arizona Copper Company, Limited, a corporation, duly organized under the laws of Great Britain and Ireland, and is a citizen of the Kingdom of Great Britain, and that it has complied with the law pertaining to foreign corporations doing business in the State of Arizona, and that it is doing business in the county of Greenlee, State of Arizona, where it is engaged in mining, smelting and treating of ores and railroading.

2.

That on January 10th, 1911, or thereabouts, the said infant was an employee in the service of said corporation as brakeman on a slag train of said corporation at said county of Greenlee, and on said day,

owing to the unsafe condition of said cars and negligence of said corporation, said infant fell under the wheels of the cars of said slag train, and as a result thereof said infant was caused to lose a leg, and was otherwise crippled. That said infant desires to bring an action in said United States District Court for the District of Arizona, for damages, against said corporation, on the account of said injuries.

## 3.

That said infant is a native-born citizen of the United States, citizen of the State of Arizona, and a resident of the county of Greenlee, State of Arizona, and also your petitioner is a citizen of the State of Arizona, a resident of the town of Clifton, Greenlee County, State of Arizona. [2\*]

That your petitioner has made this application at the request of said infant, and that your petitioner believes he is a proper and fit person to be appointed guardian *ad litem* of said minor in said matter.

WHEREFORE, your petitioner asks that he be appointed guardian *ad litem* of said minor, to prosecute the rights of said minor in said action.

(Signed) ROMAN SILVAS,  
Petitioner on Behalf of said Minor.

State of Arizona,  
County of Greenlee.

Roman Silvas, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that said minor is over the age of fourteen years, under the age of twenty-one years; that affiant

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\*Page-number appearing at foot of page of original certified Record.

has heard read the foregoing petition, and knows the contents thereof, and that the allegations and statements therein contained are true of his own knowledge.

(Signed) ROMAN SILVAS.

Subscribed and sworn to before me this 29 day of September, 1913.

My commission expires Feb. 15th, 1916.

[Notarial Seal] (Signed) L. KEARNEY,  
Notary Public. [3]

*In the District Court of the United States for the  
District of Arizona.*

In the Matter of the Petition of RICHARD  
SILVAS, an Infant, for the Appointment of  
a Guardian *ad Litem*.

**Order Appointing Guardian Ad Litem.**

On reading and filing the annexed petition of Roman Silvas, verified the 29th day of September, 1913, for the appointment of Roman Silvas, as his guardian *ad litem*, and the consent of the said Roman Silvas, duly acknowledged, subjoined hereto, and it appearing to the Court that said Roman Silvas is a competent and responsible person, and on motion of William M. Seabury, of counsel for petitioner, it is ordered that said Roman Silvas be and he hereby is appointed guardian *ad litem* of said Richard Silvas, the infant above named, to prosecute, as such guardian for the said Richard Silvas, the action mentioned in the annexed petition.

Dated October 2, 1913.

(Signed) WILLIAM H. SAWTELLE,  
Judge of said District Court.

I, the above-named Roman Silvas, hereby consent to become the guardian *ad litem* of said Richard Silvas, to bring the action referred to in the hereto annexed petition.

(Signed) ROMAN SILVAS.

State of Arizona,  
County of Greenlee,—ss.

On this 29 day of September, 1913, before me personally came Roman Silvas, known to me to be the person who executed the annexed instrument, accepting said appointment of guardian *ad litem*, and acknowledged to me that he executed the same.

(Signed) ROMAN SILVAS.

Subscribed and sworn to before me this 29 day of September, 1913.

My commission expires Feb. 15th, 1916.

[Notarial Seal] (Signed) L. KEARNEY,  
Notary Public. [4]

[Endorsements]: No. 107. In District Court of the United States for District of Arizona. In the Matter of the Petition of Roman Silvas for Appointment of Guardian *ad Litem* of Richard Silvas, an Infant. Petition for an Order to Appoint Guardian *ad Litem*. Written Consent of the Requested Guardian. Order Appointing Guardian. Filed October 2d, 1913. (Signed) George W. Lewis, Clerk.  
[5]

*In the United States Court for the District of  
Arizona.*

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,

Defendant.

**Summons.**

Action Brought in the United States District Court  
for the District of Arizona.

The President of the United States of America,  
Greeting: To The Arizona Copper Company,  
Limited, a Corporation.

YOU ARE HEREBY SUMMONED and required  
to appear in an action brought against you by the  
above-named plaintiff in the United States District  
Court for the District of Arizona, and answer the  
complaint filed therein with the Clerk of this said  
District, or in all other cases within thirty days there-  
after, the times above mentioned being exclusive of  
the day of service, or judgment by default may be  
taken against you.

Given under my hand and seal of the United  
States District Court for the District of Arizona, this  
third day of October, A. D. 1913.

[Seal of Court]

(Signed) GEORGE W. LEWIS,  
Clerk of the said District Court.



State of Arizona,  
County of Greenlee,—ss.

I HEREBY CERTIFY that I received the annexed summons on the 6th day of October, 1913, at 10:45 A. M., and personally served the same on the 6th day of October, 1913, on The Arizona Copper Company, Limited, the corporation defendant named in said summons, by then and there delivering to and leaving with James G. Cooper, personally, at Clifton, in the County of Greenlee, State of Arizona, a copy of said summons, to which was attached a true copy of the complaint mentioned in said summons; that the said James G. Cooper [6] at the time of said service was the agent designated by said corporation on whom process issued by authority of or under the laws of the State of Arizona may be served and when so served shall be deemed, taken and held to be lawful personal service on said corporation.

Dated this 6th day of October, 1913.

C. A. OVERLOCK,  
United States Marshal for the District of Arizona.

By (Signed) G. A. Franz,  
Deputy United States Marshal for Dist. of Arizona.

[Endorsements]: No. 107. United States District Court, District of Arizona. Summons. Filed Oct. 10, 1913. (Signed) George W. Lewis, Clerk. [7]

**[Minutes of Court—December 13, 1913.]**

MINUTE ENTRY MADE DECEMBER 13, 1913.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

ARIZONA COPPER COMPANY, LIMITED, a  
Corporation,  
Defendant.

IT IS ORDERED that this case be set for hearing  
on December 20th, 1913, on the motion heretofore  
filed herein. [8]

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**[Minutes of Court—December 20, 1913.]**

MINUTE ENTRIES APPEARING UNDER  
DATE OF DECEMBER 20, 1913.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

ARIZONA COPPER COMPANY, LIMITED, a  
Corporation,  
Defendant.

Comes now the plaintiff by his attorney, and asks  
leave of the Court to withdraw his application here-  
tofore filed herein to sue *in forma pauperis*, and same  
was accordingly agreed.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

ARIZONA COPPER COMPANY, LIMITED, a  
Corporation,  
Defendant.

Comes now the defendant, by W. C. McFarland, Esquire, its attorney, and the plaintiff, by James Westervelt, its attorney, and the demurrer interposing the statute of limitation which was filed by the defendant to the complaint of the plaintiff, is argued by counsel and submitted to the Court for its decision and judgment thereon, and the Court takes the same under advisement until a future day of this term.  
[9]

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[Minutes of Court—January 10, 1914.]

MINUTE ENTRY APPEARING UNDER DATE  
OF JANUARY 10, 1914.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

ARIZONA COPPER COMPANY,  
Defendant.



IT IS ORDERED that this case be set for trial on January 26th, 1914. [10]

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**[Minutes of Court—January 21, 1914.]**

MINUTE ENTRY APPEARING UNDER DATE  
OF JANUARY 21, 1914.

No. 107.

RICHARD SILVAS, a Minor,

Plaintiff,

vs.

ARIZONA COPPER CO.,

Defendant.

IT IS ORDERED that the order heretofore made setting the trial of this case for January 26th, 1914, be vacated, and that the case be continued until the April Term of this court at Phoenix. [11]

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**[Minutes of Court—March 12, 1914.]**

MINUTE ENTRIES APPEARING UNDER  
DATE OF MARCH 12th, 1914.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY,

Defendant.

IT IS ORDERED that the plaintiff be required to give bond for security for costs in the sum of \$250.00,

to be approved by the Clerk of this Court, within thirty days from date hereof, to which ruling and action of the Court, the plaintiff excepted.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY,

Defendant.

The motion heretofore made by the defendant to require the plaintiff to make his complaint more definite and certain having been argued and considered by the Court,

IT IS ORDERED that said motion be granted, to which ruling and action of the Court the plaintiff excepted.

No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY,

Defendant.

IT IS ORDERED that the motion of the defendant to dismiss this action, because of the pendency of another action of the same cause, be denied. [12]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Amended Complaint.**

Plaintiff above named in this amended complaint  
complains of defendant and alleges:

1.

That plaintiff is a resident of the county of Green-  
lee, in the State of Arizona, and is a citizen of the  
said State of Arizona.

2.

That on the 2d day of October, 1913, at Phoenix,  
Arizona, on application duly made, the above-named  
Roman Silvas was, by order of the Hon. William H.  
Sawtelle, Judge of the District Court of the United  
States for the District of Arizona, duly appointed  
the guardian *ad litem* of this plaintiff, for the purpose  
of this action.

3.

That defendant, The Arizona Copper Company,  
Limited, is a corporation, duly incorporated under  
the acts of Parliament of the United Kingdom of  
Great Britain and Ireland, known as the Company's  
Acts, 1862 to 1883, having its registered office at Edin-

burgh, Scotland, and is a citizen of Great Britain, and that it has filed its appointment of its statutory agent in the office of the Arizona Corporation Commission, at Phoenix, Arizona, and also filed its appointment of its statutory agent in the office of the county recorder of the County of Greenlee, State of Arizona, and that it has published its articles of incorporation, and filed the same in the office of said Arizona Corporation Commission, and that it has fully complied with all requirements of law pertaining to foreign corporations doing business in said State of Arizona, and during the times and places herein mentioned it was, has been, and yet is, such corporation, engaged in carrying on the business of mining, smelting, conducting machine-shops, [13] concentrator works, electric plant, railroading, conducting ores, and divers other business pursuits at the town of Clifton, in the county of Greenlee, State of Arizona, in its corporate name of "The Arizona Copper Company, Limited."

## 4.

At said town of Clifton, during the times herein mentioned, defendant has owned, conducted, and yet owns and conducts, extensive smelting and reduction works, where it manufactures about 60 tons of copper each day, and that it in such treatment melts down a large amount of rock and ore into slag, and for the purpose of disposing of said slag, it uses engines, cars and slag trains and about seven miles of railroad tracks, which connect with said smelter. The rails of the tracks so used are 36 inches apart.

That the slag train is usually designated as a part

of the Coronado railroad, but the same is owned and conducted by defendant, and the phrase, "Coronado railroad," being used to designate that business as contradistinguished from other adventures of defendant.

That defendant employs a large number of engineers, firemen, switchmen, and brakemen, whose business it is to run and operate said slag train for defendant.

That the cars used in said slag train are briefly described as follows: Being about 16 feet long, 48 inches high, the trucks rest on four wheels, two of which are at each end, and 36 inches apart, the slag pot rests on top of the trucks and is so arranged as to tip from one side to the other, to dump out the slag. The cars are all iron and will each weigh about eight tons, and the pot will hold about 5 tons of slag. That at each end of the car, at about 10 inches above the track, there is an iron platform fastened to the trucks, which platform is about 15 inches wide, 36 inches in length cross-wise of the track, and in the middle of the platform, on top of surface thereof a car coupler is bolted thereon, which takes up about one-third ( $\frac{1}{3}$ ) of the surface of the platform, and which coupler is in a sloping shape, from one inch on the inner, to 6 inches, to outer surface of the platform, and about equi-distant from this coupler to the outer edges of the platform, on each side, iron hooks are bolted to the [14] surface thereof, which hooks turn up towards the car and take up about  $\frac{1}{6}$  the surface of the platform, and that said coupler and



iron hooks take up about one-half the top surface of said platforms.

That some six or seven of said cars are coupled together and form what is known as the "slag train," which trains are moved out and back by steam locomotives, and such train sometimes going a distance of a mile from said smelter, to the point where the slag is dumped, at divers points along the line of defendant's railroads.

That there are no hand-holds, nor supports, nor anything which the brakemen or switchmen, who ride on said cars and operate said trains, can hold when said train is in motion except the outer edges of hot slag pots, which are usually hot, and that said servants in performing their said duties must stand upon said obstructed platforms, when said trains are in motion, in order to perform the work required of them by defendant in said train service.

That said platforms, on account of the manner of their construction, being small, one-half the surface thereof obstructed with said coupling devices, and some of the platforms thereof being loose, tottery and tilting, and insecurely fastened, are wabby, and there being nothing for one to hold onto except the outer edges of the slag pots, when riding on said platforms, which are insecure, unsafe and dangerous, but, nevertheless, the brakemen and switchmen must ride on said platforms in order to perform the work required of them by defendant in said train service.

That on or about January 10th, 1911, this infant plaintiff was in the service or employment of defendant, as brakeman, on said slag train on the end

thereof farthest from the locomotive, and that as such brakeman on said day, he had gone out from said smelter, with said slag train, westerly, up Chase Creek, on the line of defendant's said railroad, a distance of about  $\frac{3}{4}$  of a mile from said smelter, to a point, a short distance above where the wagon road crosses said railroad, on the westerly outskirts of said town of Clifton, when hot slag was being dumped from the [15] pots of said slag train, on to damp surface, which caused much steam and smoke to arise, which obscured the vision of plaintiff, and said train being in motion, this infant plaintiff was negligently ordered by defendant to board said cars and to go with said train, and this plaintiff being then and there in the proper discharge of his duties as said brakeman, having due regard for his own personal safety, and being without fault or negligence on his part, in compliance with the said orders of defendant, attempted to get onto one of said platforms, the only place for him then and there to ride, in the discharge of his said duties, and which said platform, without notice or knowledge to plaintiff, was old, worn, bent, loose, tottery, slanting, out of shape, insecurely fastened and in bad order, so that when plaintiff stepped upon the same, the said platform tipped, tilted and turned downward and caused plaintiff to fall under the wheels of said cars, and the same ran over his feet and right leg, cutting and breaking the bones in his left foot, and breaking the bones of his right leg between the knee and ankle, so that his right leg had to be amputated just below the knee, and that he was also injured in his hips, cut,

bruised, maimed, crippled and otherwise injured, and that on account of said injuries he was confined in a hospital for three months and suffered great mental and physical pain, yet suffers, and will continue to suffer pain; that said injuries have greatly disfigured and rendered him unsightly, deformed and crippled, and is permanently disabled, and his capacity to labor or earn money is greatly impaired.

That defendant, so negligently permitted said unsafe and dangerous cars to be used as aforesaid, when the same were out of repair, unsafe and dangerous and the same were so negligently run and conducted and managed in said slag train, when in said unsafe and dangerous condition, which defective and unsafe condition caused plaintiff to fall under the wheels of said cars and sustain the aforesaid injuries.

That in addition to the negligence hereinbefore mentioned, defendant carelessly and negligently permitted said slag cars to become and remain out of repair, become unsafe, dangerous and unfit for use, and negligently permitted said cars and said platforms [16] to become loose, weakened, old and worn, insecurely fastened, and unserviceable, so that plaintiff and his coemployees could not step upon said platforms without danger of the same giving away and causing them to fall under the wheels of said cars, and that defendant negligently failed to supply said cars with hand-holds or of anything of a substantial nature to assist said employees in getting on and off said platforms with reasonable safety, yet the defendant with full knowledge of said defects, dangerous cars and unsafe platforms, before and at the time



of said injury, carelessly and negligently used and continued to use and operate said cars while the same and said platforms were so defective, dangerous and unsafe.

That before and at the time of said injury it was the duty of defendant to inspect said cars and the platforms thereof and see that the same were in a reasonably safe condition before permitting them to be used and operated; and that defendant was guilty of negligence in failing to inspect and examine said cars and the platforms thereof, before permitting the same to go out in said service in the aforesaid conditions, at the time and before plaintiff sustained his said injury; that if defendant had inspected said cars and the platforms thereof, which it was its duty to do, and which said duty it negligently failed to perform, it could and would have known of all of said defects and have avoided said injury, but, on the contrary, it negligently and carelessly permitted said cars and platforms thereof, in the defective condition aforesaid, to be operated, and used in said defective and unsafe condition from month to month to the time of said injury, without inspection or any examination thereof, and without making or attempting any needed repairs thereon, and that on account of said failure to inspect and keep said cars and platforms thereof in a reasonably safe condition the plaintiff sustained said injuries.

That the plaintiff at the time of his said injuries had just gone to work on said slag train, and had no notice or knowledge of said defects, nor notice of the said unsafe condition of said cars and platforms,

until too late to avoid said injury. [17]

That at the time of plaintiff's said injury, it was then and there, and at all times, the duty of defendant to furnish, keep, and maintain a reasonably safe, sufficient, and suitable place for plaintiff to work in, and to provide and maintain sufficient, suitable, and reasonably safe appliances with which to perform said labor, all of which defendant negligently failed to do, and that by reason of the foregoing facts the defendant did have an unsafe place and unsafe tools and dangerous appliances for the plaintiff to perform said work, which caused plaintiff's said injuries, and plaintiff's injuries were further caused by the defendant's neglect to formulate, promulgate and enforce rules and regulations for the safety of plaintiff and his coemployees, in that defendant did have an improper signal system, and had neglected to promulgate rules and regulations for the safety of the said work, and did not enforce any such rules or regulations for the safety of its employees.

That plaintiff at the time of his said injuries was but a boy of 18 years of age, was without skill, and had little or no experience in performing the character of work in which he was engaged when he sustained his said injuries, and was of immature judgment, and wanting in discretion, and from his said youth, immaturity of judgment, and want of discretion was ignorant of, and had not the capacity to understand and appreciate, the said dangers connected with said railroad work, the extent of said dangers, and the means of avoiding them.

That the work which plaintiff performed, brake-

man as aforesaid, was work which plaintiff could not perform without great danger to himself, by reason of his youth, inexperience, unskillfulness, ignorance, and incapacity, and that for the same reason the danger and its extent were not known or patent to plaintiff; and defendant, by directing the plaintiff to perform said brakeman work, exposed him to great danger and liability, that he, unless prevented by adequate instructions, warning and care, would through his youth, inexperience, unskillfulness, ignorance, and incapacity, perform the said work, and thus sustain injury.

That defendant at the time and before the date of said injuries, [18] knew and very well understood that said plaintiff was without experience as brakeman aforesaid, that he was a youth, unskilled, ignorant, and without the capacity to perform the said work, and at the date of said injury and long before that time the defendant had full knowledge of all the facts and circumstances, and it was the duty of defendant to instruct and warn the plaintiff of the said dangers and their extent, and the means of avoiding them; but, notwithstanding this knowledge on the part of defendant, its officers and agents, the defendant carelessly and negligently failed to instruct or inform the plaintiff as to said dangers and of the hazard of the employment as brakeman aforesaid; that defendant negligently failed to warn plaintiff of said dangers, the means of avoiding the same, and of the extent of said dangers, and that defendant breached its said duty in failing to warn and instruct the plaintiff as to said dangers and of the

means and methods to avoid the same, and in consequence of the said several acts of negligence, and omissions of duty, on the part of defendant, hereinbefore and hereinafter alleged, the plaintiff sustained his said injuries.

Plaintiff further says that each of the aforesaid negligent and careless acts and omissions on the part of the defendant, operating together, was the direct and proximate cause of said accident, and plaintiff's consequent injuries, and for which defendant is liable.

That plaintiff at time of happening of said accident, January 10th, 1911, was of the age of 18 years, in robust health, had always been well, and was of good constitution, then capable of earning \$2.50 per day, or \$90.00 per month, or \$1,080.00 per year. That his expectation of life at time of said injury was 43.53 years.

Plaintiff further says that defendant through its negligence and carelessness has wrongfully deprived plaintiff of his means of procuring a living, and caused plaintiff much mental and physical pain, loss of leg, crippled left foot, impaired use of limbs and body, bodily disfigurement, nervous and spinal affections, which [19] are permanent, and that he has on account of said injuries suffered damages in the sum of forty-three thousand dollars, no part of which has ever been paid plaintiff.

WHEREFORE, by reason of said premises, the plaintiff demands judgment against said defendant for the sum of forty-three thousand (\$43,000.00)



dollars; together with the costs and disbursements of this action.

L. KEARNEY,  
W. M. SEABURY,  
E. E. WALL,  
Attorneys for Plaintiff.

[Endorsements]: No. 107. In the District Court of the United States for the District of Arizona. Richard Silvas, an infant, by Roman Silvas, his Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Amended Complaint. Filed April 2, 1914. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy Clerk.

Service by copy admitted this 31 day of March, 1914, Clifton, Ariz.

McFARLAND & ELLIOTT,  
Attorneys for Defendant. [20]

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[Minutes of Court—April 6, 1914.]

MINUTE ENTRY APPEARING UNDER DATE  
OF APRIL 6, 1914.

No. 107.

RICHARD SILVAS, an Infant,  
Plaintiff,

vs.

ARIZONA COPPER MINING CO., LIMITED,  
Defendant.

IT IS ORDERED that this case be set for trial on April 23, 1914. [21]

## [Opinion.]

*In the District Court of the United States for the  
District of Arizona.*

AT LAW.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, his Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,  
Defendant.

L. KEARNEY, Esquire, Clifton, Arizona, and  
WM. M. SEABURY, Esquire, Phoenix,  
Arizona, for Plaintiff.

W. C. McFARLAND, Esquire, Clifton, Arizona,  
for Defendant.

The defendant in this cause has made and filed its motion that plaintiff be required to give security for costs before proceeding further with the trial, and in support of said motion filed an affidavit of its cashier, alleging that neither the said Richard Silvas nor the said Roman Silvas, guardian *ad litem* of plaintiff, has property out of which the costs of this action could be made by execution. Thereupon the affidavits of plaintiff and his guardian *ad litem* were filed. These affidavits show the poverty of these parties, but do not contain an averment that no person interested in the cause was able to secure the costs.

It was stated in open court by counsel for defendant, and not denied by plaintiff or his counsel, that a notice had been served on defendant that counsel for plaintiff had a contract [22] with him, by the terms of which they were to be paid a sum equal to fifty per cent of the recovery as a fee for their services.

There was filed by plaintiff an objection to the motion to require security, in which it is contended that plaintiff "ought not by right to be required to give security for costs, because under the provisions of a statute of Arizona, entitled an "Act to prescribe the procedure in civil actions," approved April 1, 1913, being Senate Bill No. 90, and by section 257 of said statute, it is provided that "no guardian shall be required in any case to give security for costs, and there is no statute of Congress on the subject." That statute is as follows:

"Sec. 257. Neither the state, nor any county thereof, nor any state board or commission or state officer in his official capacity nor any executor, administrator or guardian, appointed under the laws of this state, nor any trustee in bankruptcy, shall be required in any case to give security for costs."

The defendant contends that such statute has no binding force on this Court, for the reason that Congress has legislated on the subject and this Court must look to the Act of Congress and disregard the Act of the State Legislature.

By Act of Congress of July 20, 1892 (27 Statutes

at Large, 252, Fed. Stat. Anno., Vol. 2, p. 294), it is provided:

(Sec. 1.) That any citizen of the United States, entitled to commence any suit or action in any court of the United States, may commence and prosecute to conclusion any such suit or action without being required to prepay fees or costs, or give security therefor or after bringing suit or action, upon filing in said court a statement under oath, in writing, that, because of his poverty, he is unable to pay the costs of said suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the [23] redress he seeks by such suit or action, and setting forth briefly the nature of his alleged cause of action.

Sec. 2. That after any such suit or action shall have been brought, or that is now pending, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit, and wilful false swearing in any affidavit provided for in this or the previous section, shall be punishable as perjury as in other cases.

Sec. 3. That the officers of court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases.

Sec. 4. That the court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss any such cause so brought under



this act if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious.

Sec. 5. That judgment may be rendered for costs at the conclusion of the suit as in other cases: *Provided*, That the United States shall not be liable for any of the costs thus incurred.

The question here presented is, under which of these statutes must the Court proceed.

It is insisted by the plaintiff that section 914, Revised Statutes of the United States, commonly called the Conformity Statute, which provides that "The Circuit and District Courts of the United States in matters of practice, pleading and forms and modes of proceeding in actions at law shall conform as near as may be to the state practice," makes the State statute obligatory on this court, and the contention of the defendant is that the Act of Congress of July 20, 1892, alone can be followed.

We think the latter contention must prevail. The [24] Congressional Act referred to is in general and broad terms, and covers the whole subject.

In *Lange vs. Union Pacific R. R. Co.*, 126 Fed. 338, the Circuit Court of Appeals of the Eighth Circuit in discussing this question used this language:

"Moreover, where Congress has legislated generally upon any such subject the rules of the state practice in respect thereof are superseded, and the extent and limitations of the power of the courts of the United States are to be found in

the Congressional enactment and are not in the laws of the states.”

The conformity statute has received repeated construction by the Supreme Court of the United States.

In *Railroad Company vs. Hirsch*, 93 U. S. 291, the Court says, in speaking of the effect of that statute,

“But it does not require those courts (United States Courts) to follow the State practice in all its subordinate requirements or unimportant details. Those provisions may be rejected which in the judgment of the courts would unwisely encumber the administration of the law or tend to defeat the ends of justice.”

In *Shepard vs. Adams*, 168 U. S. 618, the Court said that uniformity of practice was left by the Act of Congress (sec. 914, Revised Statutes) to be attained largely through the discretion of the National Courts. [25]

It being thus evident that the law of Congress must furnish the standard by which this motion must be weighed, it becomes material to decide which is required by that Act.

There is now on file in this case no affidavit from the plaintiff such as is required by the statute, and as the record now stands, the order requiring security must be granted; but, as the plaintiff may again make application, we will consider what is required under this statute to authorize the Court to excuse him from giving security.

The requisites of the affidavit under this Act were considered in the case of *Boyle vs. Great Northern Ry. Co.*, 63 Federal, 539. In that case and in the

case at bar the motion and proof disclose that the plaintiff's counsel had undertaken to conduct the case on a contingent fee. The Court says:

“There is no question but what a poor person can prosecute his cause and obtain a full hearing, but at the same time litigation is not to be fostered and encouraged by allowing the plaintiff to evade any expense which he makes. That is a duty of any party having sufficient means, and is not to be evaded. If he is not able to pay costs or give security for them, he can have justice without it. But a person who acquires by contract an interest in any litigation, and a right to share in the fruits of a recovery, and who is not entitled to sue *in forma pauperis*, cannot be permitted, under cover of the name of a party who is a poor person, to use judicial process and litigate at the expense of other people. I think it does make a difference whether the plaintiff has made a contract with his counsel for their compensation. It makes this difference: that, after a contract has been made with counsel for a pecuniary interest in a lawsuit, the case is carried on partially for their benefit; and, if they are able to pay the expenses of the litigation, it is unjust for the Court to allow the litigation to go on for their benefit, without expense, on the pretense that the plaintiff is unable to pay. I shall require a showing that the plaintiff is unable to pay or secure the costs, and that there is no person interested, by contract or otherwise, in the cause of action, or entitled to share in the

recovery, who is able to pay or secure the costs. I think that such a rule is in keeping with the meaning and spirit of this law, and it is founded in reason." [26]

In *Feil vs. Wabash R. Co.*, 119 Federal, 490, it was disclosed that the case was being prosecuted by the plaintiff's attorney on contingent fee. Speaking of the effect of such contract or contingent fees on the right of the plaintiff to be relieved of costs under the Act of July 20, 1892, the Court held that in such cases the plaintiff represents not only her own interest but also that of the attorneys in the case, and she sues for herself and as trustee for others, and standing in this position, she could not be held to be poor within the meaning of the law, unless the beneficiaries are poor also. The Court concludes: "No petition to sue as a poor person can avail, unless it discloses that all the beneficiaries, as well as the nominal plaintiff, come within the purview of the Act."

In *Reed vs. Pennsylvania Co.*, 111 Federal, 714, the Circuit Court of Appeals, speaking through Justice Lurton, now of the Supreme Court, uses this language as to what an affidavit under this law must disclose:

"The affidavit in this case is defective in this: The suit is that of the widow and administratrix of Frank Reed, who sues for damages subsequent upon the tortious killing of her intestate and husband. Under the Ohio statute authorizing such an action, the damages recoverable are for the benefit of the widow of the deceased, and they are the real parties in interest. Bates' Abb.



St. Ohio, #6135. The beneficiaries and real parties in interest, are therefore the widow and the children of the deceased. The affidavit shows sufficiently the poverty of the widow, but is defective in not making a like showing in behalf of the children of the deceased. *Boyle vs. Railroad Co. (C. C.), 63 Fed. 539.*”

“It may be that the estate of the deceased is able to prepay the costs of the writ of error, or secure the same. If so, the act would have no application. The affidavit makes no showing as to the value of the estate of which the plaintiff is administratrix. The application is for these reasons denied, but without prejudice to its renewal upon an affidavit showing that the estate of the deceased, as well as the beneficiaries, is unable to pay the costs or give security.” [27]

In the case of *Phillips vs. Louisville & N. R. Co.*, 153 Federal, 795, is a full and able discussion of the objects to be attained by this statute; the following extracts from which will be of interest as a clear statement of the law:

“This statute is of a charitable and beneficent nature. Its sole purpose is to enable persons, who, in good faith, are unable, on account of poverty, to prosecute any suit or action in the courts of the United States, to obtain a fair chance to have their rights adjudicated. It is not intended that the statute should be used directly or indirectly to benefit those who are able to prosecute their suits. The citizen seeking the benefit of the statute, and making the affidavit

of poverty required thereby, must of necessity be the only person benefited by his cause of action. It surely was never intended by the statute that two or more persons should be interested financially in the result of a suit or action brought, and that, if one of them happens to be without means, this one can be permitted to make an affidavit of poverty and secure the benefits of the statute for the other parties to the suit who are able to prosecute same, even though they may not appear by name as parties. The admission by the attorneys for the plaintiff that they were interested to the extent of one-third of any amount that might be recovered made them financially interested in the result of the lawsuit, and, unless they too could make and file an affidavit as to their poverty, the plaintiff in this cause could not obtain the benefit of the statute."

The showing here made not being sufficient to authorize the Court to relieve the plaintiff from securing the costs, it is ordered that the plaintiff give security for costs in the sum of Two Hundred Dollars, to be approved by the clerk of the court, within thirty days from this date.

[Endorsements]: Filed Apr. 10, 1914, at — M. Geo. W. Lewis, Clerk. By (Signed) R. E. L. Webb, Deputy. [28]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Answer to Amended Complaint.**

Without waiving any motions to strike filed in this court, but especially reserving the right to press the same before this court, comes now The Arizona Copper Company, Limited, a corporation, the defendant above named by its attorneys, with this its answer to plaintiff's amended complaint on file herein and demurs thereto, and for ground of demurrer alleges and shows the Court:

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

WHEREFORE, defendant prays judgment as to the sufficiency of said complaint.

W. C. McFARLAND,  
H. A. ELLIOTT,  
Attorneys for Defendant.

Without waiving the foregoing demurrer, defendant further answers plaintiff's amended complaint and by way of separate answer and defense thereto, alleges and shows the Court:

1. That defendant was not guilty of any negli-

gence, carelessness or improper conduct towards plaintiff, as in said [29] amended complaint alleged or in any other way or manner, or at all, but that the injury or injuries received by said plaintiff, if any there were, which is not admitted, but is specially denied, were received wholly and entirely because of plaintiff's own unlawful, wrongful and negligent conduct, at the time and place of his alleged injury or injuries, in this, to wit:

That at the time and place of plaintiff's alleged injury or injuries, this plaintiff without due or any regard for his own safety, not then and there being an employee of this defendant either as in plaintiff's amended complaint alleged, or otherwise, and without permission, license or acquiescence of this defendant, but against its express prohibition, warning and advice, and not in the discharge of any duty arising out of, or imposed upon plaintiff in the course or scope of any employment by or with this defendant, or any relation, connection or affiliation of any kind, character or degree whatsoever therewith, and as a trespasser, wholly without any right or permission, acquiescence or license of this defendant to be, or to go in and upon the premises, cars, train of cars or other appliances of this defendant as in plaintiff's amended complaint described, or otherwise, but then and there at such place, at such time, against the express prohibition, warning and advice of this defendant, as aforesaid, did wilfully and knowingly and unlawfully, go upon, trespass and take a position upon a car, or train of cars, belonging to this defendant, as in said amended complaint described; it



then and there being well known to this plaintiff that he was at such place, at such time, unlawfully, wrongfully and without permission, authority, or license, of this defendant, and that such place and position were dangerous to life and to limb, he not being at such place at such time by defendant's consent, invitation or inducement, or by or through any act, order, or thing done, or omitted to [30] be done by defendant, its authorized officers, servants, employees or other agents, or otherwise, and that plaintiff received his said injury or injuries, as in said amended complaint described, or otherwise, if at all, wholly by reason of his said act, or failure to act, as aforesaid, and not by reason of any negligence, want of care, fault or default of this defendant, or that of any other person or persons, imputable to this defendant.

2. That defendant was not guilty of any negligence, carelessness or improper conduct towards plaintiff, as in said amended complaint alleged, or in any other way or manner, or at all, but that the injury or injuries received by said plaintiff, if any there were, which is not admitted but specially denied, were received wholly and entirely because of plaintiff's want of proper care and caution, and due or any regard for himself in looking out for his personal safety, and by reason of his own negligence and carelessness.

3. That if at the time and place mentioned in plaintiff's amended complaint, plaintiff received his injury or injuries while in the employ of this defendant, which is not admitted, but is specially denied

as in said amended complaint alleged, while attempting to board a train of cars belonging to this defendant, plaintiff so received his said injury or injuries wholly by reason of his own negligence and want of care at such time and place, and not by any negligence or default or want of care on the part of this defendant, and that if this plaintiff was in the employ of this defendant, at such time and place, and if any negligence, want of care, fault or default, other than that of this plaintiff as aforesaid, caused or contributed to cause said injury or injuries, it was the negligence, want of care, fault or default of a fellow-servant or fellow-servants of this plaintiff, then and there in the employment of this defendant. [31]

4. That if said plaintiff was in the employ of this defendant at the time and place of his injury or injuries as in said amended complaint described, which is not admitted, but is specially denied, defendant alleges that said injury or injuries, either as in said amended complaint alleged or otherwise, if any there were, were occasioned wholly by, and resulted from the usual and ordinary risks of the employment in which plaintiff was engaged, which said employment is denied as aforesaid at the time and place of his alleged injury or injuries, which said risks of employment, if any employment there were, were wholly assumed by plaintiff by entering upon and continuing in said employment. That said risks were fully known to and appreciated by plaintiff in entering upon and continuing in said employment, if any employment there were, which is denied as aforesaid, or by the exercise of reasonable diligence

on the part of this plaintiff should have been fully known to and appreciated by him, and that said alleged injury or injuries did not in any respect, or at all, result from, or were in any degree occasioned by any neglect or default on the part of this defendant, either as alleged in said amended complaint or otherwise, and that if plaintiff's injury or injuries as in said amended complaint described, or otherwise, if any there were, were caused or contributed to by any defect or defects in defendant's appliances, tools, machinery or cars, as in said amended complaint described, or otherwise, this plaintiff wholly assumed the risks of such employment, arising because of such defect or defects, by entering upon and continuing in his said employment, if any employment there were, which is denied, the said defect or defects at the time and place of said injury or injuries being then and there open and obvious and known to, and fully appreciated by plaintiff, or which could have been known to, or fully appreciated by plaintiff by the exercise of [32] reasonable diligence on his part.

WHEREFORE, having answered, defendant prays that plaintiff take nothing by his said cause of action, and that defendant be hence dismissed with its costs and disbursements herein expended, and what other and further relief the Court may adjudge meet and proper in the premises.

W. C. McFARLAND,

H. A. ELLIOTT,

Attorneys for Defendant.

Further answering plaintiff's amended complaint,

herein, defendant denies generally and specifically, each and every, all and singular, the allegations in said complaint contained, not herein expressly admitted or qualified.

WHEREFORE, having fully answered, defendant prays that plaintiff take nothing by his said cause of action, and that defendant be hence dismissed with its costs and what other and further relief the Court may adjudge meet and proper.

W. C. McFARLAND,

H. A. ELLIOTT,

Attorneys for Defendant. [33]

[Endorsements]: In the District Court of the United States for the District of Arizona. Richard Silvas, an Infant, by Ramon Silvas, His Guardian, *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Answer to Amended Complaint. Filed this 18th day of April, 1914. George W. Lewis, Clerk.

Received copy of the within Answer to Amended Complaint this 16 day of April, 1914.

(Signed) E. E. WALL,

Attorney for Plaintiff.

(Signed) L. KEMEY.

W. C. McFARLAND,

H. A. ELLIOTT,

Attorneys for Defendant. [34]

[**Minutes of Court—April 21, 1914.**]

MINUTE ENTRY APPEARING UNDER DATE  
OF APRIL 21, 1914.

No. 107.

RICHARD SILVAS, an Infant,  
Plaintiff,  
vs.  
ARIZONA COPPER MINING CO., LIMITED,  
Defendant.

An order having been made by this Court on March 12, 1914, requiring the plaintiff herein to give bond in the sum of \$250.00 as security for costs herein, within thirty days from that date, and the plaintiff having failed to execute such cost bond within the said thirty days, by virtue of section — of the Code of Arizona, this case now stands dismissed and the Clerk of this Court is hereby ordered to note the dismissal of this action upon the record. [35]

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[**Bill of Exceptions.**]

*In the District Court of the United States for the  
District of Arizona, Sitting at Phoenix, in the  
State of Arizona.*


AT LAW—No. 107.

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,  
vs.  
THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.



Be it remembered that after issue was joined in this cause the following proceedings were had, the Hon. William H. Sawtelle presiding, both parties appearing by counsel.

## I.

On the 25th day of October, 1913, the defendant  Wm. H. S.,  
Judge. under the provisions of a statute of the State of Arizona entitled "~~An act to prescribe the~~ procedure in civil actions" approved April 1, 1913, being Senate Bill No. 90, Section 254, moved for an order requiring plaintiff, Richard Silvas and Roman Silvas, his guardian *ad litem* duly appointed by this Court as such on October 2, 1913, to give security for costs in the above-entitled cause on the ground that Richard Silvas and Roman Silvas, his guardian *ad litem*, nor either of them, are owners of property out of which costs could be made by execution sale. A copy of said motion and the affidavit upon which it was made is hereto attached as exhibit "A."

On the 30th day of October, 1913, the plaintiff filed with the clerk of this court the affidavits of Richard Silvas, the plaintiff herein, and Roman Silvas, his guardian *ad litem*, which set forth that said plaintiff and his guardian *ad litem* were [36] unable to pay the costs or any part thereof, or to give security for costs on account of the poverty of each of them, and prayed that said plaintiff and his guardian *ad litem* be permitted to prosecute this action without giving security for costs to defendant or securing costs at all. A copy of the said affidavit of Richard Silvas, the plaintiff herein, is attached hereto as exhibit "B." A copy of said affidavit of Roman

Silvas is attached hereto as exhibit "C."

On the 20th day of December 1913, the plaintiff and his guardian *ad litem* appeared by his counsel before this Court and asked leave of the Court to withdraw their application theretofore filed in this cause to sue *in forma pauperis*. Thereupon the Court granted said motion and plaintiff and his said guardian *ad litem* withdrew their said application and the affidavits by which it was made, of which exhibits "B" and "C" are copies.

Thereafter and on the same day, to wit, December 20, 1913, the plaintiff and his guardian *ad litem* made written objection to said motion of the defendant herein for an order requiring plaintiff to give security for costs on the ground that plaintiff is an infant appearing in this action by his guardian *ad litem*, and that under the provisions of section 257 of a statute of the State of Arizona entitled "An act to prescribe the procedure in civil actions approved April 1st, 1913, being Senate Bill No. 90, being par. 646, Civil Code 1913, it is provided that no guardian shall be required in any case to give security for costs and that there is no statute of Congress on the subject. A copy of said written objection is annexed hereto as exhibit "D." The defendant thereupon filed its answer thereto which is attached hereto marked exhibit "F."

On January 21, 1914, a hearing was had by the parties hereto upon said motion, and the Court, after hearing counsel on both sides, reserved decision on said motion.

Thereafter on the 12th day of March, 1914, the

Court decided that section 257 of said statute of the State of Arizona did not apply to the said proceedings and that said proceedings [37] were governed by the act of Congress of July 20, 1892 (27 Statutes at Large, 252 Fed. Stat. Anno. Vol. 2, p. 294). Thereupon, on the said 12th day of March, 1914, the Court ordered that the plaintiff be required to give bond for the security of costs in the sum of Two Hundred and Fifty (\$250.00) Dollars to be approved by the clerk of the court within thirty (30) days from date of said order and the plaintiff excepted to this ruling and order of the Court, which exception was allowed.

## II.

The plaintiff having failed to execute the cost bond required by said order of March 12, 1914, within thirty (30) days, the Court on the 21st day of April, 1914, on written motion of defendant, dismissed this action and ordered the clerk of this court to enter the dismissal upon the record. It is admitted in open court that a written contract of employment existed June 13th, 1913, and now exists between plaintiff and his guardian *ad litem* and his attorneys, L. Kearney and E. E. Wall, copy of which is hereto annexed marked exhibit "E," and made a part hereof.

The foregoing is allowed and approved as the bill of exceptions in the above-entitled cause this 24th day of June, 1914.

WM. H. SAWTELLE,  
Judge. [38]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "A" [Motion for Order Requiring Plaintiff  
to Give Security for Costs].**

Comes now the defendant, The Arizona Copper Company, Limited, by its attorneys, W. C. McFarland and H. A. Elliott and shows to the Court:

That plaintiff, Richard Silvas and Roman Silvas, his guardian *ad litem*, nor either of them, are the owners of property out of which costs could be made by execution sale, wherefore defendant moves the Court for an order requiring plaintiff to give security for costs in the above-entitled cause.

W. C. McFARLAND,  
H. A. ELLIOTT,  
Attorneys for Defendant. [39]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "A"—Affidavit [of J. G. Cooper in Support  
of Motion for Order Requiring Plaintiff to Give  
Security for Costs].**

State of Arizona,  
County of Greenlee,—ss.

J. G. Cooper, being by me first duly sworn, deposes and says: That he is the cashier of The Arizona Copper Company, Limited, defendant above named, that he has authority to make this affidavit for and in behalf of said defendant company, and that he is advised and believes, and upon such information and belief, states the fact to be, that neither Richard Silvas, the plaintiff above named, nor Roman Silvas, guardian *ad litem* of said plaintiff, has property out of which, the costs of this action could be made by execution sale.

J. G. COOPER,

Subscribed and sworn to before me this 22d day of  
October, A. D. 1913.

[Notarial Seal]      THOMAS B. INGLES,  
Notary Public in and for the County of Greenlee,  
State of Arizona.

My commission expires February 23d, 1916. [40]



*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "B" [Affidavit of Richard Silvas Re  
Inability to Secure Costs].**

State of Arizona,  
County of Greenlee,—ss.

Richard Silvas, being first duly sworn, says: That he is the above-named infant, plaintiff in this action, that he is a citizen of the United States and of the State of Arizona; that he does not know of any one who would go surety on any cost bond for him in this action, and that he is unable to secure cost in this action, and that on account of his poverty he is unable to give security for costs herein, and for the same reason he is unable to pay the costs or any part thereof in this action.

WHEREFORE, affiant asks that he be permitted to prosecute this action without giving security for cost to defendant, or securing cost at all.

RICHARD SILVAS.

Subscribed and sworn to before me this 28th day of October, 1913.

[Seal]

L. KEARNEY,  
Notary Public. [41]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "C" [Affidavit of Roman Silvas Re  
Inability to Secure Costs].**

State of Arizona,  
County of Greenlee,—ss.

Roman Silvas, being first duly sworn, deposes and says: That he is above-named guardian *ad litem* for Richard Silvas, said infant; that affiant is a citizen of the United States and of the State of Arizona; that affiant is a *bona fide* resident of the County of Greenlee, State of Arizona, and that he is a married man and has a family depending upon him for support; that he is not the owner of any property in his own name or right, except that he has a half interest in a small lot, at Clifton, in said Greenlee County, which will not exceed in value the sum of One Hundred and Fifty (\$150) Dollars; that he does not know of any one who would go surety on any bond for him

in this action, and that on account of his poverty he is unable to give security for costs herein, and for the same reason he is unable to pay the costs herein or any part thereof.

WHEREFORE, affiant prays that he be permitted to prosecute this action as guardian *ad litem* of said Richard [42] Silvas without giving security for costs herein.

ROMAN SILVAS.

Subscribed and sworn to before me this 28th day of October, 1913.

L. KEARNEY,  
Notary Public.

My commission expires February 15, 1916. [43]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "D"—Objection to Motion Requiring  
Plaintiff to Give Security for Costs.**

Comes now the plaintiff above named opposing the motion of the defendant herein for an order requiring plaintiff to give security for costs, and shows to this Court that he ought not by right to be required to give security for costs herein because under the

provisions of a statute of the State of Arizona, entitled an "Act to prescribe the procedure in Civil Actions," etc., approved April 1, 1913, being Senate Bill #90, and by Section 257 of said Statute it is provided that no guardian shall be required in any case to give security for costs; and there is no statute of Congress on the subject.

L. KEARNEY,  
W. M. SEABURY,  
Attorneys for the Plaintiff. [44]

COPY.

*In the Superior Court of the County of Greenlee,  
State of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "E" [Contract—June 13, 1913—Richard  
Silvas, etc., and E. E. Wall et al.].**

This agreement made and entered into by and between the said Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, the parties of the first part, and E. E. Wall and L. Kearney, the parties of the second part; all of Clifton, Arizona.

WITNESSETH, that the said Richard Silvas has a cause of action against the Arizona Copper Company, Limited, a corporation, organized under the laws of Great Britain and Ireland, and which cor-

poration has complied with all the requirements of law pertaining to foreign corporations doing business in the State of Arizona, and during the time herein mentioned, it was, and yet is, such corporation, lawfully doing business at the county of Greenlee, Territory (now State) of Arizona, as a mining and smelting corporation, and engaged in other business pursuits, at said County of Greenlee.

That on or about January 10th, 1911, the said Richard Silvas was an employee for hire in the service of said corporation, at Clifton, Arizona, as brakeman, on a smelter slag train, and on said day, because of the negligence of said corporation and its servants, while said infant was in the proper discharge of his duties as such employee, in the said service of said corporation, he was thrown under the wheels of the said slag train and suffered an injury which resulted in his having a leg amputated, and was otherwise maimed and crippled; that on account of said injuries the parties of the first part desire to bring an action against the said corporation for damages, in said court, or such other court as parties of the second part may designate.

Now, therefore, for the purposes of bringing such action, and the prosecution of the same, against said corporation, the parties of the first part have hired, employed *and by these servants have employed* and retained the parties of the second part as their attorneys for such purpose, to prosecute said action in whatsoever court they may desire, until final termination thereof, and hereby giving and granting unto the parties of the second part full power and



authority, to compromise, settle or dispose of said action, or said claim for damages, upon such terms and conditions as may be deemed for the best advantage of the said Richard Silvas; that parties of the second part shall have and receive, for their said services, as compensation, one-half of any and all sums of money recovered in any such action, suit or proceeding, or upon any compromise or settlement of said claim or demand, said attorneys shall receive one-half of the sum paid on such compromise or settlement, whether such settlement or compromise be made by such attorneys or by or through others.

That parties of the first part desire to secure and protect the parties of the second part, and secure to them, the fee herein agreed to be made, and for the purpose of securing such attorney fee, does by these presents assign such claim and demand for damage, and the said cause of action against said corporation, to the said parties of the second part, as security for the said fee agreed to be paid, but this assignment is only intended as a security, and is to be void and of no effect, should the said attorney fee be paid to parties of the second part, or the same received by them, otherwise, such assignment, as such security, to remain in full force and effect.

That the parties of the second part in view of the compensation agreed to be paid them as aforesaid, and the securing the same by the lien, and security, aforesaid, agree to render said services, in any and all courts in which said action may be brought or instituted, and continue to render such services, for the consideration aforesaid until termination of such

action and proceeding.

IN WITNESS WHEREOF, said parties on this 13th day of June, 1913, agree to the same, and subscribe our names hereto.

RICHARD SILVAS.

ROMAN SILVAS.

L. KEARNEY.

E. E. WALL. [45]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Exhibit "F"—Answer of Defendant to Affidavit to  
Sue in Forma Pauperis.**

Comes now the defendant, The Arizona Copper Company, Limited, by W. C. McFarland and H. A. Elliott, its attorneys, and for answer to plaintiff's affidavit for order to prosecute this action *in forma pauperis*.

Objects to the affidavit of plaintiffs for an order to permit them to prosecute this action without giving security for costs and prepaying fees and costs on the following grounds, to wit:

1. Because it does not appear from the affidavit filed that the said Richard Silvas is a citizen of the United States or of the State of Arizona.

2. Because it does not appear from the affidavit filed by the plaintiffs in this cause that no other person or persons having interest in the result of the suit is unable to give security for costs.

3. Defendant represents and shows to the Court that on or about the third day of October, 1913, the plaintiffs, [46] Richard Silvas, and his guardian *ad litem*, Roman Silvas, entered into one certain written agreement with L. Kearney and E. E. Wall, their attorneys, wherein and whereby the said plaintiff and his guardian *ad litem*, contracted and agreed with the said L. Kearney and E. E. Wall, that for and in consideration of the services of the said L. Kearney and E. E. Wall, as their attorneys in the commencement and prosecution of this action, they, the said plaintiff and his guardian *ad litem*, to pay L. Kearney and E. E. Wall for their services as their attorneys, "a sum equal to fifty per centum of the amount received, either by suit or compromise," and by the terms of said written contract, the said L. Kearney and E. E. Wall, as their attorneys, agreed to accept said sum in full payment for their services in the prosecution of this action.

That by the terms of said written contract it was further agreed by and between plaintiff, his guardian *ad litem* and their said attorneys, L. Kearney and E. E. Wall, that plaintiff and his guardian *ad litem* would not compromise this cause without the written consent of their said attorneys.

That by the terms of said written contract it was further agreed by and between plaintiff and his said guardian *ad litem*, and the said L. Kearney and E.

E. Wall, their attorneys that said attorneys would not compromise or settle this cause without the written consent of the plaintiff and his said guardian *ad litem*.

Defendant is advised and believes, and on such advice and belief alleges, that the written contract by and between plaintiffs and their attorneys, L. Kearney and E. E. Wall, is on file in the United States District Court for the District [47] of Arizona, and is attached to the original complaint in this cause, a copy of which was served upon the defendant at the time of the service of Summons and copy of complaint; a copy of said contract and agreement hereto attached and marked exhibit "A."

Defendant further objects to said affidavit and order because it nowhere appears therein, that plaintiff and his said guardian *ad litem* believes that he, the plaintiff, is entitled to redress he seeks in this action. Because no facts are alleged in said affidavit setting forth briefly, or otherwise, the nature of the alleged cause of action.

It appearing from said contract that the said L. Kearney and E. E. Wall are pecuniarily interested in the result of this action, and it not appearing in said affidavit, that said L. Kearney and E. E. Wall, by reason of their poverty are unable to give security for costs of this action. Defendant objects to said affidavit and order by this Court permitting plaintiff and his guardian *ad litem* to prosecute this action without giving security for costs.

W. C. McFARLAND,  
H. A. ELLIOTT,  
Attorneys for Defendant. [48]

[Endorsements]: No. 107. In the District Court of the United States for the District of Arizona, Sitting at Phoenix, in the State of Arizona. Richard Silvas, an Infant, by Roman Silvas, his Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Bill of Exceptions. Filed June 24, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. William M. Seabury, Fleming Building, Phoenix, Arizona. [49]

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*In the United States District Court for the District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, his Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,  
Defendant.

**Petition for Writ of Error.**

And now comes Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, plaintiff in the above-entitled cause, and says that on the 21st day of April, 1914, this Court dismissed the action herein in which order of dismissal and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of



error may issue in this behalf, out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the records, proceedings and the papers of this cause, duly authenticated, may be sent to said Court of Appeals.

L. KEARNEY,  
W. M. SEABURY,  
Plaintiff's Attorneys. [50]

[Endorsements]: In the United States District Court for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff, vs. the Arizona Copper Company, Limited, a Corporation, Defendant. Petition for Writ of Error. Filed June 24, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. L. Kearney, Clifton, Ariz. William M. Seabury, Fleming Building, Phoenix, Arizona. [51]

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*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Assignment of Errors.**

The plaintiff, Richard Silvas, an infant, by Roman

Silvas, his guardian *ad litem*, in connection with and as a part of its petition for a writ of error filed herein, makes the following assignments of error which it avers were committed by the Court in dismissing the action herein and in the proceedings in said cause before and after the ordering of said dismissal appearing in the records herein, that is to say:

### I.

The Court erred in ordering on the motion of the defendant that the plaintiff be required to give bond for security of costs herein in the sum of Two Hundred and Fifty (\$250) Dollars, which motion was opposed by the plaintiff by his guardian *ad litem* on the ground that under the provisions of section 257 of a statute of the State of Arizona entitled an "Act to prescribe the procedure in Civil Actions," etc., approved April 1, 1913, being Senate Bill No. 90, constituting paragraph 646 of the Arizona Revised Statutes of 1913, it is provided that no guardian shall be required in any case to give security for costs, and there is no statute of Congress on the subject. The plaintiff duly excepted to said order. [52]

### II.

The Court erred in granting the defendant's motion for security for costs on the ground authorized by Chapter XXIV of said statute of the State of Arizona, entitled an "Act to prescribe the procedure in Civil Actions," etc., approved April 1, 1913, being Senate Bill No. 90 and constituting Title 6, Chapter XXIV, of the Arizona Revised Statutes of 1913, and

in holding that the exception contained in said chapter in favor of guardians *ad litem* was inapplicable to said motion under Section 914 of the Revised Statutes of the United States.

### III.

The Court erred in finding and holding that said Section 257 of said Arizona Statute, being Senate Bill No. 90 and providing that no guardian shall be required in any case to give security for costs, is not binding on said Court, under section 914 of the Revised Statutes of the United States, which provides that the Circuit and District Courts of the United States in matters of practice, pleading and forms and modes of proceeding in actions at law shall conform as near as may be to the State practice.

### IV.

The Court erred in finding and holding that the Act of Congress of July 20, 1892 (27 Statutes at Large 252 Federal, Stat. Anno. Vol. 2, p. 294), was the sole statute governing the proceedings for security for costs in said court, that said Act covered the whole subject involved in said proceedings, and that therefore said Section 257 of said Arizona Statute being Senate Bill No. 90 and providing that no guardian shall be required in any case to give security for costs had no application to proceedings for security for costs in said court.

### V.

The Court erred in dismissing this action. [53]

Wherefore, the defendant prays that for said

manifest errors the judgment of the Court should be reversed.

L. KEARNEY,

W. M. SEABURY,

Attorneys for Plaintiff. [54]

[Endorsements]: In the District Court of the United States for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, his Guardian, *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Assignment of Errors. Filed Jun. 24, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. L. Kearney, Clifton, Ariz., William M. Seabury, Fleming Bulding, Phoenix, Arizona. [55]

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*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN  
SILVAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

### **Order Allowing Writ and Fixing Bond.**

And now comes the plaintiff by his attorneys and filed herein and presented to the Court, his petition praying for the allowance of a writ of error, and assignment of errors intended to be urged by him, praying also, that a transcript of the record and proceed-

ings, and papers, duly authenticated may be sent to the United States Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration thereof, the Court does allow the writ of error upon plaintiff giving bond, according to law in the sum of Two Hundred and Fifty Dollars.

June 24th, 1914.

WM. H. SAWTELLE,  
Judge. [56]

[Endorsements]: In the District Court of the United States for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, his Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Order. Filed Jun. 24, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. L. Kearney, Clifton, Ariz., William M. Seabury, Fleming Building, Phoenix, Arizona. [57]

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*In the District Court of the United States in and  
for the District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,

Defendant.



**Praeipce for Transcript of Record.**

To the Clerk of the United States District Court for the State of Arizona.

You will please prepare a transcript of the complete record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit under the Writ of Error to be perfected to said court in said cause, and include in said transcript the following proceedings, pleadings, papers, records and files, to wit:

Summons and Return,  
Amended Complaint,  
Answer to Amended Complaint,  
Petition for the Appointment of a Guardian  
*ad Litem*,  
Order appointing Guardian *ad Litem*,  
Consent to Become Guardian *ad Litem*,  
Opinion on Motion for Security for Costs,  
Transcript of Minute Entries, [58]  
Bill of Exceptions,  
Petition for Writ of Error,  
Assignment of Errors,  
Order Allowing Writ of Error,  
Bond on Writ of Error,  
Writ of Error,  
Citation,  
Praeipce for Transcript,—

and all other record entries, pleadings, proceedings, papers and filings necessary or proper to make a complete record upon said writ of error in said

cause, said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

L. KEARNEY,  
WM. M. SEABURY,  
Attorneys for Plaintiff. [59]

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Praecipe for Transcript of Record. Filed Jul. 1, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [60]

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*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,  
Defendant.

**Bond [on Writ of Error].**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Richard Silvas, an infant, and Roman Silvas, his guardian *ad litem*, as principals, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the

State of New York and authorized to do business as a surety company in the State of Arizona, surety, are held and firmly bound unto the Arizona Copper Company, Limited, defendant in error in the full sum of Two Hundred and Fifty (\$250) Dollars, the same being the amount of the bond fixed by the District Court of the United States for the District of Arizona by order duly entered on the records of said Court on June 24, 1914, 1914, to be paid to the said The Arizona Copper Company, Limited, defendant in error, its successors, legal representatives or assigns to which payment, well and truly to be made, we bind ourselves, and our and each of our successors, heirs, executors, administrators, legal representatives, jointly and severally by these presents.

Sealed with our seals and dated this, *this day of 8th*, in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, on the 21st day of April, 1914, at the District Court of the United States for the District of Arizona, [61] in a suit pending in said court between Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, plaintiff, and The Arizona Copper Company, Limited, defendant, an order was entered dismissing said action, and the said Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, has obtained a writ of error to reverse said order of dismissal in the aforesaid action and filed a copy thereof in the clerk's office of said court, and a citation directed to the said Arizona Copper Company, Limited, defendant, citing and admonishing

it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, State of California.

Now, the condition of the above obligation is such that if the said Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, shall prosecute his said writ of error to effect and answer all costs, if he fail to make said plea good, then the above obligation to be void, else to remain in full force and effect.

And the said bond and obligation is upon the further express condition and agreement by the sureties thereto, that in case of a breach of the condition set forth herein, this Court may upon notice to said sureties of not less than ten days proceed summarily in said action or suit in which this bond is given to ascertain the amount which said sureties are bound to pay on account of such breach of said bond and undertaking and render judgment against the said sureties and each of them and award execution thereon.

RICARDO SILVAS,  
NATIONAL SURETY COMPANY,  
C. E. PETTINGALL,

Resident Ass't Secy.

ROMAN SILVAS, as said Guardian,

LYSANDER CASSIDY,

Res. Vice-pres.

NATIONAL SURETY COMPANY,

A Corporation Organized and Existing Under and  
by Virtue of the Laws of the State of New York

and Authorized to Do Business as a Surety  
Company in the State of Arizona.

[Seal of National Surety Co.]

By \_\_\_\_\_.

The above and foregoing bond approved this 9th  
day of July, 1914.

(Signed) WM. H. SAWTELLE,  
Judge. [62]

[Endorsements]: No. 107. In the District Court  
of the United States for the District of Ari-  
zona. Richard Silvas, an Infant, by Roman Sil-  
vas, His Guardian *ad Litem*, Plaintiff, vs. The Ari-  
zona Copper Company, Limited, a Corporation,  
Defendant. Bond. Filed Jul. 10, 1914, at — M.  
George W. Lewis, Clerk. By R. E. L. Webb, Dep-  
uty. L. Kearney, Clifton, Arizona, William M.  
Seabury, Fleming Building, Phoenix, Arizona. [63]

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*In the United States District Court for the District  
of Arizona.*

No. 107 (Phoenix).

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,  
Defendant.



**Order Under Rule 16, Section 1, Enlarging Time to August 15, 1914, to File Record Thereof and to Docket Case.**

Upon consideration of the application of Mr. George W. Lewis, the Clerk of the District Court of the United States for the District of Arizona, and good cause therefor appearing,

IT IS ORDERED that the time within which the original certified Transcript of the Record in the above-entitled cause may be filed, and within which the cause may be docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and hereby is enlarged to and including the 15th day of August, A. D. 1914.

(Signed) WM. H. SAWTELLE,  
Judge of the United States District Court for the District of Arizona.

Dated at Tucson, Arizona, this 1st day of August, A. D. 1914. [64]

[Endorsements]: No. 107 (Phoenix). In the United States District Court for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Order Enlarging Time Within Which to File Certified Transcript of Record. Filed Aug. 1, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [65]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,

Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIMITED,  
a Corporation,

Defendant.

**Writ of Error (Original).**

The President of the United States to the Honorable  
Judge of the United States District Court for  
the District of Arizona, Greeting:

Because in the records and proceedings, as also in  
the rendition of an order of dismissal, of a plea which  
is in the said District Court before you, between  
Richard Silvas, an infant, by Roman Silvas, his  
guardian *ad litem*, plaintiff, and The Arizona Copper  
Company, Limited, defendant, a manifest error has  
happened, to the great damage of the said Richard  
Silvas, plaintiff, as by his complaint appears, we  
being willing that error if any *hath, shall* be duly  
corrected, and full and speedy justice done to the  
parties aforesaid in this behalf, do command you,  
if order of dismissal be entered, that then under your  
seal, distinctly and openly, you send the record and  
proceedings aforesaid, with the things concerning the  
same, to the United States Circuit Court of Appeals  
for the Ninth Circuit, together with this writ so that  
you have the same at San Francisco, California, in

said Circuit, within thirty days of the date of this writ, in said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, [66] what of right, and according to the laws and customs of the United States, shall be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this the 24th day of June, A. D. 1914, and of the Independence of the United States the one hundred and thirty-sixth.

Allowed:

WM. H. SAWTELLE,  
U. S. District Judge.

[Seal]

GEORGE W. LEWIS,  
Clerk of the United States District Court for the District of Arizona.

By Robert E. L. Webb,  
Deputy. [67]

[Endorsed]: In the District Court of the United States for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Writ of Error. Filed Jul. 1, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [68]

*In the District Court of the United States for the  
District of Arizona.*

RICHARD SILVAS, an Infant, by ROMAN SIL-  
VAS, His Guardian *ad Litem*,  
Plaintiff,

vs.

THE ARIZONA COPPER COMPANY, LIM-  
ITED, a Corporation,  
Defendant.

**Citation [on Writ of Error (Original)].**

The President of the United States to The Arizona  
Copper Company, Limited, and to W. C. Mc-  
Farland and H. A. Elliott, Your Attorneys,  
Greeting:

You are hereby cited and admonished to be and  
appear at a session of the United States Circuit  
Court of Appeals for the Ninth Circuit, to be holden  
at the city of San Francisco, California, in said cir-  
cuit, within thirty (30) days from the date of this  
writ, pursuant to a writ of error filed in the clerk's  
office of the District Court of the United States for  
the District of Arizona, wherein Richard Silvas, an  
infant, by Roman Silvas, his guardian *ad litem*, is  
plaintiff in error, and you are defendant in error,  
to show cause, if any there be, why the order of dis-  
missal in said writ of error mentioned should not be  
corrected, and why speedy justice should not be done  
to the parties in that behalf.

WITNESS, the Honorable EDWARD D.  
WHITE, Chief Justice of the Supreme Court, this

the 1st day of July, 1914, and of the Independence of the United States the one hundred and thirty-eighth.

WM. H. SAWTELLE,  
United States District Judge for the District of  
Arizona. [69]

Service of a copy of the within citation is hereby admitted.

W. C. McFARLAND,  
H. A. ELLIOTT,  
Attorneys for Defendant.

Dated 3d day of July, 1914.

[Endorsed]: In the District Court of the United States for the District of Arizona. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff, vs. The Arizona Copper Company, Limited, a Corporation, Defendant. Citation. Filed Jun. 24, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. [70]

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[Certificate of Clerk U. S. District Court to  
Transcript of Record.]

*In the United States District Court for the District  
of Arizona.*

United States of America,  
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing sixty-five (65) pages, numbered from and including one (1) to and including sixty-five (65), to be a full, true and cor-



rect copy of the record and the whole thereof in the above-entitled suit, No. 107, wherein Richard Silvas, an infant, by Roman Silvas, his guardian *ad litem*, is plaintiff and The Arizona Copper Company, Limited, a corporation, is defendant, said record consisting of "Petition for Appointment of Guardian *ad Litem*"; "Consent to Become Guardian and Order Appointing Guardian"; "Summons and Marshal's Return"; "Amended Complaint"; "Opinion on Motion for Security of Costs"; "Answer to Amended Complaint"; "Bill of Exceptions"; "Petition for Writ of Error"; "Assignment of Errors"; "Order Allowing Writ and Fixing Bond"; "Praecipe for Transcript of Record"; "Bond"; and "Order Enlarging Time in which to file Transcript of Record"; and of all of the Minute Entries, as the same appear from the original records thereof, remaining in my office; that pages sixty-six (66) to seventy (70), inclusive, comprise the originals of the "Writ of Error" and the "Citation." [71]

I further certify that the cost for the preparation of this record is as follows, to wit:

Copying 130 folios at 20¢ each.....	\$26.00
Clerk's Certificate, 2 folios at 30¢ per folio.....	.60
Seal of the Court.....	.40

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Total.....\$27.00

and that the said Twenty-seven (\$27.00) Dollars was paid by William M. Seabury, Esquire, counsel for the plaintiff.

WITNESS my hand and the seal of said court,  
affixed this 12th day of August, A. D. 1914.

[Seal]

GEORGE W. LEWIS,  
Clerk.

By Robert E. L. Webb,  
Deputy Clerk. [72]

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[Endorsed]: No. 2465. United States Circuit Court of Appeals for the Ninth Circuit. Richard Silvas, an Infant, by Roman Silvas, His Guardian *ad Litem*, Plaintiff in Error, vs. The Arizona Copper Company, Limited, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Received and filed August 15, 1914.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

